## REMARKS

Claims 25-53 are currently pending, although claims 44-53 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of claims 44-53, all of which ultimately depend from claim 25, under MPEP 821.04.

The Office Action rejected the pending claims under 35 U.S.C. § 103 as obvious over U.S. patent 5,753,241 ("Ribier I") in view of U.S. patents 5,130,122 ("Tabibi") and 6,669,849 ("Nguyen"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

The Office Action recognized that Ribier I does not teach nanoemulsions containing surfactants, ophthalmic nanoemulsions, or nanoemulsions having the required turbidity. (Office Action, page 5). To compensate for Ribier I's failure to teach or suggest the claimed surfactant, the Office Action asserted that Tabibi's general reference to "surfactants" would be sufficient to lead one skilled in the art to use the required solid surfactants selected from the group consisting of esters of a fatty acid and of a sugar and ethers of a fatty alcohol and of a sugar. To compensate for Ribier I's failure to teach or suggest the required turbidity, the Office Action asserted that Nguyen's disclosure of water samples having floc size of 1-2 mm and turbidity of 3.6 NTU would lead one skilled in the art to the claimed nanoemulsions.

None of the applied art teaches or suggests the required surfactants. The Office Action recognized that Ribier I does not disclose the claimed surfactant. Similarly, the Office Action recognized that Tabibi neither teaches nor suggests the required solid surfactants. (Office Action, page 6). Finally, Nguyen neither teaches nor suggests the claimed surfactants.

Because the required surfactant is completely missing from the applied art, the asserted combination of references cannot yield the claimed invention, meaning that no *prima facie* case of obviousness exists.

For at least this reason, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection.

Furthermore, Tabibi relates to microemulsions, not nanoemulsions. Specifically, Tabibi discloses emulsions with oil globules having a diameter of 0.5 microns (500 nm), preferably 0.3 microns (300 nm), and exemplifies emulsions with oil globules having a diameter of 0.17 microns (170 nm), 0.20 microns (200 nm), and 0.27 microns (270 nm). Thus, Tabibi does not disclose or suggest preparing the claimed nanoemulsions having the required oil globule size. What's more, no teaching or suggestion exists in Tabibi to modify the disclosure therein to add an unnamed solid surfactant and to lower oil globule size to that of the claimed nanoemulsion with the reasonable expectation that a stable nanoemulsion product would result.

Similarly, Nguyen does not relate to nanemulsions. Nguyen relates to a completely different art, disclosing a water treatment process. One skilled in the cosmetic arts would not refer to such a non-analogous art for help in preparing a nanoemulsion. Moreover, even assuming one skilled in the cosmetics art would consult Nguyen, the floc size upon which the Office Action has relied, 1-2 mm, does not correspond to a nanoemulsion. Thus, like Tabibi, no teaching or suggestion exists in Nguyen to modify the disclosure therein to add an unnamed solid surfactant and to create a nanoemulsion having oil globules with the size

required in the claims with the reasonable expectation that a stable nanoemulsion product would result.

In short, nothing in Nguyen or Tabibi, references which do not relate to either nanoemulsions or the required surfactants, would motivate one skilled in the art to modify Ribier I so as to arrive at the claimed nanoemulsions.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

The Office Action also rejected claims 25, 42 and 43 under the judicially created doctrine of double patenting based upon claims in U.S. patents 6,335,022, 6,541,018 (in combination with U.S. patent 6,419,946), and 6,461,625. In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

None of the claims in the references relied upon by the Office Action teach or suggest the nanoemulsions of claims 25, 42 and 43 having both the required surfactant and the required oil globules, nor would any of these claims have motivated one skilled in the art to modify such claimed subject matter in a manner sufficient to yield the presently claimed invention. For example, all of the cited patents require different surfactants than those required in the pending claims. Thus, the claims in the applied references would not lead one skilled in the art to the claimed nanoemulsions.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the double patenting rejections.

The Office Action also objected to the oath/declaration, asserting that correct citizenship of the inventors has not been indicated. Applicants respectfully submit that such

citizenship has been properly indicated. French citizenship properly identifies the inventors as being from France. That the oath/declaration is sufficient is evidenced by the fact that the same declaration was submitted in the parent case, U.S. patent application serial no. 09/460,092, and the parent case issued as U.S. patent 6,689,371. Clearly, the oath/declaration was sufficient for the parent case, meaning that it is sufficient for the present application as well.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the objection to the oath/declaration.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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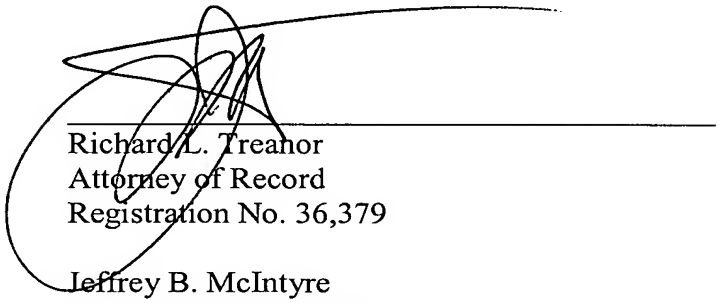

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